THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.6348 of 2005

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the Memo No.17705/PS-2/2004-3 dated 14.2.2005 issued by the first respondent as arbitrary, illegal and contrary to the provisions of A.P. Education Act and the rules made thereunder and consequently direct the first respondent to accord permission to respondents 2 and 3 to absorb petitioner into aided Secondary Grade Teacher as per the judgment of this Court in W.P.No.10626 of 2003 dated 11.6.2003 and if necessary, shift the post to a needy school.

The facts are not much in dispute. Petitioner was appointed as Secondary Grade Teacher in fourth respondent school against an unaided vacancy after due permission from the authorities and after subjecting him to regular selection. Subsequently, an aided vacancy arose on 30.11.2001 due to retirement of incumbent. The fourth respondent sent proposals to the third respondent recommending the case of the petitioner for absorption in the said aided vacancy. The third respondent sought permission of second respondent and in turn, the second respondent sought permission and approval of first respondent. Since the matter was pending for longtime and the first respondent was not considering the same, petitioner filed W.P.No.10626 of 2003 before this Court. This Court, by order dated 11.6.2003 disposed of the said writ petition directing the first respondent to pass appropriate orders on the letter dated 7.1.2003 addressed to him by the second respondent within two months from the date of receipt of the order. When the said order was not implemented, petitioner filed Contempt Case No.1372 of 2003. During the hearing of the said contempt case, respondents produced Memo dated 16.9.2003 issued by the first respondent,

whereunder the second respondent was requested to implement the above orders, after verifying the eligibility whether the petitioner was unaided Secondary Grade Teacher appointed according to the rules issued in G.O.Ms.No.1 Education (PS.2) Department dated 1.1.1994 and also examine the roll and attendance particulars of the School as per the rules in force. Thereafter, second respondent vide proceedings dated 28.10.2003 directed third respondent to verify and furnish the service particulars of petitioner along with role and attendance particulars during the academic year 2001-2002 and 2002-2003, which are relevant for the purpose of considering the case of petitioner. When the third respondent sent the role and attendance particulars for subsequent years i.e. 2002-2003, second respondent vide proceedings dated 8.6.2004 requested the third respondent to examine the role and attendance particulars as per rules. Thereafter, Government passed the impugned order dated 14.2.2005 stating;

> "The Government have examined the case in detail and hereby order that the individual had been appointed in an unaided post. If there is no adequate strength, the management has to wind up that post, as they are the pay masters. The question of shifting the post to some other school does not arise. The management is free to take a decision to wind up that post, as they had created that post".

Being aggrieved by the said order, the present writ petition is filed.

The learned counsel for petitioner strenuously contended that the rights of the petitioner have already been determined in W.P.No.10626 of 2003. The respondents, instead of verifying the records as per the directions of this Court, have verified the particulars beyond 2002-2003 and came to the conclusion that there is no strength available. Therefore, the question of approval of the petitioner against an aided vacancy does not arise. The learned counsel further states that even as on date, the

aided vacancy against which, petitioner's name was recommended for regular appointment is still available with fourth respondent school and neither the said post is surrendered nor withdrawn.

Heard both sides.

I am of the opinion that the case of the petitioner is required to be examined for the purpose of absorption against an aided vacancy as per the strength available during the academic year 2001-2002 and 2002-2003 and not beyond that period. Even in the counter filed by the fourth respondent-management, it is admitted that during the period from 2001-2002 and 2002-2003, there was sufficient strength for engaging five (5) Teachers including the petitioner. Therefore, the case of the petitioner ought to have been considered as per the strength available as on that period. The respondents, instead of proceeding with the matter as per the directions of this Court and as per the proceedings of second respondent dated 28.10.2003, adopted a novel method in rejecting the case of petitioner by taking into consideration of subsequent events. Had the respondents have taken the strength of students available during the academic years 2001-2002 and 2002-2003, it would have been clear that petitioner was fully qualified and eligible for being appointed. Further, it is always open for the respondents to transfer the petitioner along with post to any other institution, if necessary. In my considered opinion, the impugned order is arbitrary and illegal. The rights of the petitioner have been determined in the order passed by this Court in W.P.No.10626 of 2003 as well as the order passed by the second respondent dated 28.10.2003.

In view of the above, the respondents are directed to consider the case of the petitioner for approval of his appointment in the aided post, said to be vacant, by taking into consideration of the strength of students available in the School during the period 2001-2002 and 2002-2003. In case the service of the petitioner can be utilized in the very same college

as on today, he may be retained subject to after approval of his appointment in the said post and he may be transferred to any other school wherever necessary.

The writ petition is accordingly disposed of. No order as to costs.

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C.V.RAMULU,
J

Date: 28.12.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.6348 of 2005

28.12.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.6348 of 2005

Date: 28th December, 2007

Between:

T.Appala Naidu

.. Petitioner

And

The Principal Secretary to Government,
Education Department, Secretariat Buildings,
Hyderabad and others.

.. Respondents